

PT 98-52

Tax Type: PROPERTY TAX

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

NORTH SIDE)	
MOSQUE of CHICAGO,)	Docket Nos: 96-16-0296
APPLICANT)	
)	
v.)	Real Estate Exemption
)	for 1996 Assessment Year
)	
STATE OF ILLINOIS,)	P.I.N: 13-01-205-041
DEPARTMENT OF REVENUE)	
)	
)	Alan I. Marcus,
)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Thomas Boyle of Neal, Gerber & Eisenberg appeared on behalf of the North Side Mosque of Chicago.

SYNOPSIS: This proceeding raises a very limited issue, that being whether those portions of real estate identified by Cook County Parcel Index Number 13-01-205-041 not found to be exempt from 1996 real estate taxes in the Department of Revenue's (hereinafter the

"Department") determination dated October 9, 1997¹ should be exempt from such taxes under 35 ILCS 200/15-40 and 35 ILCS 200/15-125.²

Section 200/15-40 provides, in relevant part, for exemption of the following:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise use with a view to a profit ...[.].

35 ILCS 200/15-40.

Section 200/15-125 provides that:

Parking areas, not leased or used for profit, when used as part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, or religious or charitable institutions which meets the qualifications for exemption, are exempt [from real estate taxation].

The controversy arises as follows:

The North Side Mosque of Chicago, Inc. (hereinafter the "applicant") filed a real estate complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board") on October 9, 1996. The Board reviewed applicant's complaint and recommended to the Department that the requested exemption be approved.

The Department partially accepted this recommendation by issuing a determination dated October 9, 1997. Said determination concluded that the:

ABOVE [SUBJECT] PARCEL IS APPROVED FOR
EXEMPTION EXCEPT FOR THE PARKING LOT, THE

1. The property itself shall hereinafter be referred to as the "subject property" or the "subject parcel." That portion of the subject property currently at issue (i.e. that *not* exempted in the Department's determination) shall hereinafter be referred to as the "portion in dispute" or the "parking areas."

2. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), (hereinafter "Bracher"), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1996 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code (35 ILCS 200\1-1 *et seq*).

PARKING GARAGE AND THE LAND ON WHICH IT
STANDS IS TAXABLE (PROPERTY NOT IN EXEMPT USE)

Dept Ex. No. 2 [sic].

Applicant filed a timely appeal as to this partial denial on October 30, 1997 and thereafter presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, it is recommended that the portion in dispute not be exempt from 1996 real estate taxes.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein, namely that the parking areas were not in exempt use during the 1996 assessment year, are established by the admission into evidence of Dept. Group Ex. No. 1, Dept. Ex. No. 3.
2. Applicant was incorporated under the General Not-For-Profit Corporation Act of Illinois on November 4, 1981. Its by-laws recite that applicant's organizational purposes are, *inter alia*, to: (1) promote religious and educational activities in conformity with the religion of Islam for men in the mosque and women in their homes; (2) teach, lecture and disseminate the Islamic faith among Muslims and non-Muslims and (3) establish a mosque and meeting place. Applicant Ex. Nos. 1, 2.
3. The subject property is located at 6030-6042 N. Campbell, Chicago, Illinois, 60659. It is situated on a lot measuring 265.42' x 144' and contains the following: (1) a one-story, 10,000 square foot building (hereinafter the "mosque") that is used for Islamic prayer services no less than five times per day; (2) one parking area that measures 200' x 80' and occupies most of the subject property's northern border and (3) another parking area that measures 225' x 125' and is

located on the roof of the mosque. Dept. Group Ex. No. 1, Document A; Applicant Ex. Nos. 4-A, 4-B; Tr. pp. 20-25, 36.

4. The subject property is located due south of a commercial district located on Devon Avenue. Members of the general public who shopped in this area often used the portion in dispute for parking. Dept. Group Ex. No. 1, Doc. C. Tr. pp. 12, 16, 26, 37, 51.
5. Applicant acquired ownership of the subject property via a quitclaim deed from the City of Chicago (hereinafter the "City") dated April 17, 1993. The deed contains a covenant that provides as follows:

The lower level of the garage and the open area to the south of the garage shall be used for *public parking purposes for the general public*. Cost to [the] general public for parking shall not exceed the current price charged by [the City] at City Public Parking Lots. This agreement shall be enforced for a period of ten (10) years from the date of this deed.

Applicant Ex. No. 3 [emphasis added]; Tr. p. 11.

6. The portion in dispute consists of the two parking areas and the land underlying the parking garage. These areas contained an unspecified number of parking spaces that were continuously available to the general public (including those who shop or live in the neighborhood) and those attending prayer services at the mosque. Dept. Ex. Nos. 2, 3; Applicant Ex. Nos. 5-A, 5-B, 5-C, 5-D; Tr. pp. 26, 29, 35, 37, 43-44.
7. Approximately 100 people attended each service during 1996. However, attendance was substantially greater on Fridays (the Muslim holy day), when there were more than 1,000 people in attendance. Tr. pp. 12, 35-37.

8. Applicant also held services each evening throughout the holy month of Ramadan. Nightly attendance at these services, wherein the mosque remains open all night, was between 700 and 800 people. Tr. pp. 37, 52.
9. Approximately twice per year, the congregation becomes so large that the general public is effectively prohibited from using the parking areas. Tr. pp. 40, 52.
10. The parking areas are freely accessible throughout all hours of the day. All parking spaces contained therein, whether used by the general public or those attending the mosque, (including the Imam) are available on a first-come, first-served basis. Tr. pp. 26, 37, 44-45, 50-52.
11. Applicant did not charge anybody for parking in any of these spaces. However, for security reasons, applicant regularly assigned members of its congregation to patrol the parking areas. Tr. pp. 27-28, 30, 37, 49-51, 53.

CONCLUSIONS OF LAW:

An examination of the record established that this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the portion in dispute from 1996 real estate taxes. Accordingly, under the reasoning given below, the determinations by the Department that said portion does not satisfy the requirements for exemption set forth in 35 ILCS 200/15-40 and 200/15-125 should be affirmed.

In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General

Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-3 *et seq.* (hereinafter the "Code"). The provisions of the Code statute which govern the present case are found in 35 **ILCS** 200/15-40 and 35 **ILCS** 200/15-125. Section 200/15-40 provides, in relevant part, for exemption of the following:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise use with a view to a profit ...[.]

35 **ILCS** 200/15-40.

Section 200/15-125 provides that:

Parking areas, not leased or used for profit, when used as part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, or religious or charitable institutions which meets the qualifications for exemption, are exempt [from real estate taxation].

It is well established in Illinois that statutes exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987) (hereinafter "GRI"). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to

prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994)

An analysis of whether this applicant has met its burden of proof begins with recognition of the fundamental principle that the word "exclusively," when used in Section 200/15-40 and 200/15-145 means "the primary purpose for which property is used and not any secondary or incidental purpose." GRI, supra; Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993) (hereinafter "Pontiac Lodge"). One must also recognize that "statements of the agents of an institution and the wording of its governing documents evidencing an intention to [engage in exclusively exempt activity] do not relieve such an institution of the burden of proving that ... [it] actually and factually [engages in such activity]." Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987). Therefore, "it is necessary to analyze the activities of the [applicant] in order to determine whether it is a charitable organization as it purports to be in its charter." *Id.*

Here, the Department's determination dated October 9, 1997 (Dept. Ex. No. 2) establishes those parts of the subject property except the parking areas qualify for exemption under Section 200/15-40.³ Applicant has not challenged this part of the Department's determination. Nor has it disputed that portion which implicitly found that applicant is a religious organization. Consequently, I shall leave each of these findings undisturbed and devote any remaining analysis

3. Our courts have long ascribed to the following definition of "religious use," originally articulated in People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132 (1911) hereinafter "McCullough") when analyzing exemption claims arising under Section 200/15-40 and its predecessor statutes:

As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.

McCullough, supra, at 136-137.

to ascertaining whether the parking areas qualify for exemption under the aforementioned statutes.

Applicant correctly points out that parking areas, such as the portion in dispute, are not subject to exemption under Section 200/15-125 unless they satisfy three statutory requirements. (Applicant's brief, p. 3). These requirements are that the parking area: (1) be owned by a school district, non-profit hospital, or religious or charitable institutions which meets the qualifications for exemption set forth in the applicable section(s) of the Code; (2) be used as part of a use for which an exemption is provided in the Code and (3) not be leased or otherwise used with a view to profit. 35 ILCS 200/15-125; Applicant's brief, pp. 3-4.

Applicant is, however, incorrect in arguing that the parking areas satisfy each of the aforementioned requirements. The record establishes that these areas had two uses, one associated with non-exempt private individuals who lived or shopped in the surrounding area, the other allied with applicant's mosque. However, the deed (Applicant Ex. No. 3), clearly states that the parking areas "shall be used for *public parking purposes for the general public ...*[" (emphasis added).

This language strongly supports the inference that applicant's use was intended to be incidental to that of the general public. Such an inference favors taxation. Therefore, it is consistent with the aforementioned rules governing statutory construction. *See, supra* pp. 6-7.

This inference is also supported by other evidence of record, especially the testimony of applicant's witnesses. Mohammed S. Quaishi testified that, on an overall basis, the parking areas received more secular than congregational (mosque-related) use during the tax year in question.⁴

4. Mr. Quaishi's exact testimony on this subject was as follows:

Q. ... on the whole, would you say that more people from the public used the parking spot[s] or more people from the mosque?

A. From the public.

Tr. p. 55.

Tr. p. 55. This testimony is consistent with that of Mohammed W. Haque, who testified that congregational uses effectively prohibited the public from using the parking areas only on "special occasions." Tr. p. 40. He also testified that such occasions took place "[m]aybe twice a year" but also, indicated that congregational use was consistently heavy throughout the month of Ramadan. *Id.*

This latter portion of Mr. Haque's testimony was corroborated by Mr. Quaishi, who testified that congregational uses increased on Fridays and during the month of Ramadan. Tr. p. 52). Nevertheless, the above authorities require that I consider overall usage when determining whether the portion in dispute was *primarily* used for exempt purposes during 1996. *See, GRI, supra; Pontiac Lodge, supra.*

In order to do this, I must weigh the these latter statements against the provisions of the deed, which imply that the applicant was intended to be an incidental user of the parking areas. Mr. Quaishi's statement that the parking areas received more public than congregational use, coupled with Mr. Haque's testimony about "special occasions," further strengthen this inference by providing evidence of actual use. In light of these considerations, I conclude that the record, viewed in its totality, establishes that the increased uses attributable to Fridays and Ramadan were, on an overall basis, but isolated instances of exempt use. *See, MacMurray College v. Wright*, 38 Ill.2d 272, 279 (1967).

Such uses may have facilitated exempt, religious activity within the mosque. However, the fact that the applicant made *all* parking spaces available on a first-served basis make it factually impossible for me to divide the portion in dispute according to exempt and non-exempt uses. *See, Illinois Institute of Technology v. Skinner*, 49 Ill.2d 59 (1971). For this and all the above-stated reasons, I conclude that said portion was not "exclusively" used for religious purposes during the 1996 tax year. Therefore, the parking areas were not "used as part of a use for which an exemption is provided in this Code" as required by Section 200/15-125.

The cases cited by applicant do not alter the preceding conclusion. *Northwestern Memorial Foundation v. Johnson*, 141 Ill. App.3d 309 (1st Dist. 1986) (hereinafter "Johnson") is

easily distinguishable from the present case. There, the appellee Foundation sought exemption for a parking lot located four to six blocks away from its tax-exempt hospital complex. Employees of the hospital complex used the parking facility, although they were charged a fee that covered any operating costs associated with same.

The court held in favor of exemption. In doing so, it took "judicial notice of the fact that the hospital complex is located in a densely populated urban area which necessitates the need for adequate *employee* parking." Johnson, *supra* at 313, citing McCormick, Evidence § 330 at 963 (2nd ed. 1981) (emphasis added).

Applicant's employees were *not* the primary users of the portion in dispute. Nor were the parking areas primarily used by those who came to participate in religious services at applicant's mosque. Rather, unlike Johnson, said areas were primarily used by the general public in furtherance of commercial and other non-exempt pursuits. Based on these distinctions, I conclude applicant's reliance on Johnson is misplaced.

Applicant also relies on Illini Media Company v. Illinois Department of Revenue, 279 Ill. App.3d 432 (4th Dist. 1996), wherein the court held in favor of exempting certain real estate, including parking areas, all which it concluded was *primarily* used to facilitate exempt educational activity at the tax-exempt University of Illinois.⁵ Here, the preceding analysis establishes that although applicant was (and remains) a tax-exempt religious during 1996, its use of the parking areas did *not* qualify as "exclusively" religious through that tax year. Consequently, applicant's attempt to exempt said areas under Illini Media must fail. Therefore, the Department's determination that denied this exemption should be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that the portion in dispute, which consists of the following parts of real estate identified by Cook County Parcel

5. For further analysis of Illini Media, especially its impact on the exemption relating to "schools" and real estate "used for ... educational purposes ..." (35 ILCS 15-35) *see*, Chicago & Northeast Illinois District Council of Carpenters v. Illinois Department of Revenue, 293 Ill. App.3d 600 (1st Dist. 1997), *leave to appeal denied*, April 1, 1998.

Index Number 13-01-205-041: (1) the parking lot; (2) the parking garage and (3) the land on which said garage stands, not be exempt from 1996 real estate taxes.

August 10, 1998

Date

Alan I. Marcus
Administrative Law Judge